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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	No. 08 CR 888
Government,)	
)	Chicago, Illinois
vs.)	
)	December 16, 2009
ROD BLAGOJEVICH, ROBERT)	
BLAGOJEVICH,)	11:13 o'clock a.m.
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

For the Government:

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1 (The following proceedings were had in open
2 court:)

3 THE CLERK: 2008 CR 888, United States versus
4 Blagojevich et al.

:13AM

5 MR. SCHAR: Good morning, Judge.

6 Reid Schar and Chris Niewoehner on behalf of
7 the United States.

8 MR. ETTINGER: Good morning, Your Honor.

9 Michael Ettinger for Robert Blagojevich.

:14AM

10 MR. SOROSKY: Sheldon Sorosky and Sam Adam
11 senior and junior on behalf of Rod Blagojevich.

12 Mr. Ackerman, unfortunately, is a little
13 under the weather today and could not be here.

14 MR. ADAM, JR.: Good morning, Your Honor.

:14AM

15 MR. S.F. ADAM: Good morning, Your Honor.

16 THE COURT: I have received the draft of the
17 proposed jury questionnaire. Just for your
18 information, I generally think the agreed questions
19 are all good, there might be phrases with respect to
20 one or two that I might change, but it's not much.

:14AM

21 The additional questions, I would sustain most of
22 the objections to them but I haven't really looked
23 at that carefully. The ones that I have under
24 consideration as possible questions to ask are

:15AM

25 Defense 1, Defense 15 but that does not include 16,

1 15 only; Defense 28, the core question, the
2 sub-questions -- the one sub-question that is not
3 covered by other questions is sub 4. Defense 42, 43
4 and 44. So the government wants to elaborate its
5 objections to those, it'll have a chance to do so.

6 My next question is, I have a letter from one
7 of defense counsel to several Assistant United
8 States Attorney, dated December 3rd, 2009, and I was
9 wondering why the letter was sent to me.

10 MR. SOROSKY: Pardon me?

11 THE COURT: I'm wondering why the letter was
12 sent to me.

13 MR. S.F. ADAM: Judge, that was sent to you
14 for the completion of the record. Usually as we
15 understand it, the government was sending copies of
16 all the communication between defense counsel and
17 the government on the matter of the possible
18 agreement to limit our comments, and we understood
19 they did not include that in the communication.

20 THE COURT: No.

21 MR. S.F. ADAM: For some reason they didn't
22 send that letter to you, as we understand. They may
23 have but we didn't get the facts straight, but in
24 any event, I wanted for the completion of the record
25 Your Honor to have that.

1 THE COURT: Okay. For what it's worth, it
2 might be helpful if the language were a little less
3 purple, it's better to do it that way.

4 Another point I would like to make, which I
5 think is something that ought to be noted, if
6 defense counsel thinks that there's been adverse
7 public commentary that might possibly effect the
8 interest of their client, it is generally not a wise
9 idea to set forth extensive excerpts from that
10 commentary, because whatever complaints you have
11 about what a specific prosecutor may or may not have
12 said, is an issue having to do with whether some
13 complaint might be filed, but from the point of view
14 of your client, the sooner escapes the public
15 memory, the better it is for your client.

16 There have been, my recollection is,
17 particularly at the initial stages prior to
18 indictment, a lot of public commentary. I expect
19 that in June or perhaps maybe a month later but not
20 much, more than a month later, when we're examining
21 jurors, they will not remember the details and I
22 don't think it's in the interest of the defense to
23 remind them, and I'm quite sure the prosecutors
24 don't intend to remind them even if they might want
25 to; just an observation.

1 MR. S.F. ADAM.: I understand. Thank you,
2 Judge.

3 THE COURT: With respect to the partial
4 pretrial motions which have to deal with discovery,
5 some of it, for example in the partial pretrial
6 motions, Item Number 3, I think is not something
7 that has to be dealt with, the rest of them the
8 government can respond in writing to it.

9 MR. SCHAR: Judge --

10 THE COURT: And of it also, incidentally, has
11 to deal not so much with disputes about what is
12 discovery but the timing, and that I think is also
13 true with respect to the motion for discovery which
14 is separately filed to which you can also respond in
15 writing.

16 MR. SCHAR: Thank you, Judge, we'd like to do
17 that both on the issue of timing and, secondly, on
18 the issue of the currently pretty broad view of what
19 is actually discoverable in this case. And what
20 we'd ask, based on the schedule for the holidays,
21 that we have to the end of the first week, January
22 8th, to respond jointly to everything that we think
23 is outstanding in those two series of motions.

24 THE COURT: I think I have also been informed
25 that it's the government's current intention to seek

1 a recast indictment from the grand jury, is that
2 correct?

3 MR. SCHAR: That is correct, Judge.

4 THE COURT: And when might you anticipate?

5 MR. SCHAR: Judge, I believe that would be
6 likely the last week of January, first week of
7 February.

8 THE COURT: Okay.

9 In order to hasten things, when you do that,
10 you should, if that occurs, you should accompany
11 whatever new indictment is returned, if one is
12 returned, with a description of why you believe this
13 moots the issues that might be raised by a possible
14 decision by the Supreme Court of the United States,
15 that way the defense will understand your theory so
16 if they want to object they'll have a much more
17 focused objection.

18 So you can file, if the indictment is
19 returned, maybe within three or four days
20 thereafter, you can file a brief on that issue.

21 It would also be helpful to me were you to
22 obtain copies of the briefing in the Supreme Court
23 of the United States on the case whatever official
24 cases that they have, just attach them.

25 MR. SCHAR: The briefs? Okay.

1 THE COURT: The briefs in the Supreme Court.

2 MR. SCHAR: In the Supreme Court, very good
3 judge.

4 THE COURT: Other other matters? Anybody
5 have anything?

6 MR. SOROSKY: Nothing else, Your Honor.

7 MR. ETTINGER: No.

8 WOMAN SPEAKER FROM AUDIENCE: This is having
9 to do with the Blagojevich?

10 THE COURT: You can't make a statement. You
11 can't make a statement, you can't file anything
12 unless your lawyer and you file an appearance. So
13 you have to remain seated and you can speak to
14 Mr. Walker after the call is over.

15 MR. SCHAR: Judge, on the issue of timing and
16 responding to the defendant's motions, because we
17 think that the case is proceeding on a schedule for
18 the June trial date, is the 8th okay in terms of our
19 response to the motion?

20 THE COURT: Sure.

21 MR. SCHAR: Thank you, Judge.

22 THE COURT: You can have a couple of weeks to
23 reply.

24 THE CLERK: That will be January 22nd for the
25 defendant's reply.

1 THE COURT: Give them a first week of
2 February status.

3 THE CLERK: Next court date will be
4 February 4th at 11:00 a.m..

:26AM

5 THE COURT: Anybody have a problem with that
6 date?

7 MR. SCHAR: Judge --

8 MR. SOROSKY: Well, will the new indictment
9 be back then? It might be more provident to --

:26AM

10 THE COURT: My understand was is that if
11 there is a new indictment it will probably be
12 relatively newly returned at the time of that
13 status.

:26AM

14 MR. SCHAR: It might make more sense to do
15 early the following week on the off-chance that it's
16 that particular week or end of that week.

17 THE COURT: Do you care?

:26AM

18 MR. SOROSKY: Could I suggest a date perhaps
19 January 27th, the last week in January, just to
20 resolve the discovery matters separate and apart
21 from the new indictment?

22 THE COURT: Sure.

23 MR. SOROSKY: Because I think we have --

24 THE COURT: No, that's fair.

:27AM

25 THE CLERK: 11:00 a.m. on January 27th.

1 THE COURT: And then the second week of
2 February for status.

3 THE CLERK: February 10th.

4 MR. ETTINGER: January 27th?

5 :27AM MR. SOROSKY: Is that okay?

6 MR. ETTINGER: Yeah.

7 MR. SCHAR: Might also be arraignment day.

8 THE COURT: Might be what?

9 MR. SCHAR: An arraignment date as well, I
10 :27AM believe, if it is returned.

11 THE COURT: If that's what happens, that's
12 what happens, fine with me.

13 MR. ETTINGER: My client should be here,
14 then? We'll talk to the government before.

15 :27AM THE COURT: Exactly.

16 Anything else? From anybody?

17 MR. SCHAR: No, Judge.

18 THE COURT: Time will be excluded in the
19 interest of justice so that the defendants may
20 :28AM prepare.

21 MR. SCHAR: Thank you, Judge.

22 Have a good holiday.

23 MR. SOROSKY: Thank you.

24 :28AM MR. ETTINGER: Thank you, Judge.

25

1 THE COURT: Thank you.

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4 (which concluded the proceedings had on this
5 date in the above entitled cause.)
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
MATTER

/s/Blanca I. Lara date

Blanca I. Lara Date